



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2012-0095; FRL-9656-3]

RIN 2040-AF33

Proposed Withdrawal of Certain Federal Water Quality Criteria

Applicable to California, New Jersey and Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the federal regulations to withdraw human health and aquatic life water quality criteria applicable to certain waters of New Jersey, Puerto Rico, and California's San Francisco Bay, now that those States have adopted and EPA has approved relevant state criteria. EPA is seeking public comment on its action with respect to those state criteria that are less stringent than the federally promulgated criteria. The withdrawal of the federally promulgated criteria will enable New Jersey, Puerto Rico, and California to implement their EPA-approved water quality criteria.

DATES: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2012-0095, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: ow-docket@epa.gov.
- Mail to: Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460. Attention Docket ID No. EPA-HQ-OW-2012-0095.
- Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., N.W., Washington, DC, 20004. Attention Docket ID No. EPA-HQ-OW-2012-0095.
Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2012-0095. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA

will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at two Docket Facilities. The Office of Water ("OW") Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading

Room is (202) 566-1744. Publicly available docket materials are also available in hard copy at the U.S. EPA Region 2 and U.S. EPA Region 9 addresses. Docket materials can be accessed from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information with respect to New Jersey, contact **Wayne Jackson**, U.S. EPA, Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: (212) 637-3807 or e-mail: jackson.wayne@epa.gov). For information with respect to Puerto Rico, contact **Izabela Wojtenko** U.S. EPA, Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, NY 10007 (telephone: (212) 637-3814 or e-mail: wojtenko.izabela@epa.gov). For information with respect to California, contact **Diane E. Fleck, P.E. Esq.**, U.S. EPA Region 9, WTR-2, 75 Hawthorne St. San Francisco, CA 94105 (telephone: (415) 972-3480 or e-mail: fleck.diane@epa.gov). For general and administrative concerns, contact **Bryan “Ibrahim” Goodwin**, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania, Avenue NW, Mail Code 4305T, Washington, DC 20460 (telephone: (202) 566–0762 or e-mail: goodwin.bryan@epa.gov).

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

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I. General Information

- A. What Entities May be Affected by this Action?

No one is affected by the proposed actions contained in this notice. These proposed actions would merely serve to withdraw certain federal water quality criteria that have been applicable to New Jersey, Puerto Rico, and California now that these States have adopted criteria that EPA has determined are consistent with the CWA and its implementing regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section entitled “CONTACTS FOR FURTHER INFORMATION.”

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

What are the Applicable Federal Statutory and Regulatory Requirements?

In 1992, EPA promulgated the “National Toxics Rule” (“NTR”) to establish numeric water quality criteria for 12 states and two Territories, including New Jersey, Puerto Rico and parts of California (hereafter “States”) that had failed to comply fully with Section 303(c)(2)(B) of the Clean Water Act (“CWA”) (57 FR 60848, December 22, 1992). The criteria codified at 40 CFR 131.36 became the applicable water quality standards in those 14 States for all purposes and programs under the CWA effective February 5, 1993.

On May 18, 2000, EPA then promulgated a final rule known as the “California Toxics Rule” (“CTR”) at 40 CFR 131.38 in order to establish numeric water quality criteria for priority toxic pollutants for the State of California that were not previously in the NTR, since the State had not complied fully with Section 303(c) (2) (B) of the Clean Water Act (CWA) (65 FR31682). At that time, any criteria promulgated as part of the NTR for California were codified in the criteria tables for the CTR at 40 CFR 131.38.

The water quality standards program was developed with an emphasis on state primacy. Although in the NTR and CTR EPA promulgated toxic criteria for the certain States, EPA prefers that states maintain primacy, revise their own standards, and achieve full compliance (see 57 FR 60860, December 22, 1992). As described in the preamble to the final NTR and CTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR and/or CTR to withdraw the federal criteria applicable to that State.

Today, EPA is proposing to amend the federal regulations to withdraw certain human health and aquatic life criteria applicable in New Jersey and Puerto Rico, and the Agency does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the promulgated federal criteria. In addition, EPA is proposing to amend the federal regulations to withdraw certain other human health and aquatic life criteria applicable in New Jersey and Puerto Rico, as well as California, and the Agency is seeking public comment because such state-adopted, EPA-approved criteria are less stringent than the federally promulgated criteria.

B. What are the Applicable Federal Water Quality Criteria that EPA is Proposing to Withdraw?

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for many of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Delaware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's Polychlorinated biphenyl ("PCB") human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published the final rule to remove these criteria in the Federal Register on December 3, 2002 (67 FR 71843). However, this action did not address all applicable EPA-promulgated numeric water quality criteria contained in the 1992 NTR.

Subsequently, On March 1, 2002, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life criteria for lead and human health criteria for PCBs. EPA Region 2 approved the State's criteria on August 16, 2002, because New Jersey's numeric criteria for lead for the protection of aquatic life and for PCBs for the protection of human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

In addition, on November 8, 2006, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life

and human health criteria. New Jersey adopted aquatic life and human health criteria for the remainder of the toxic pollutants contained in the NTR. EPA Region 2 approved the State's criteria on December 20, 2006, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

For many of the pollutants covered in the 2002 and 2006 actions, New Jersey adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated federal criteria. In addition, for certain pollutants covered in the 2002 and 2006 actions, New Jersey adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA approved the State's criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the State's criteria were scientifically sound and protective of the designated use(s). EPA's actions which approve New Jersey's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number **EPA-HQ-OW-2012-0095**.

The following is a list of pollutants for which New Jersey adopted criteria that are no less stringent than the promulgated federal criteria covered in this proposal:

- Arsenic (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Cadmium (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Chromium III (aquatic life – freshwater (acute and chronic)))

- Chromium VI (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Copper (aquatic life – freshwater (acute and chronic)))
- Lead (aquatic life – freshwater (acute) and marine water (acute))
- Mercury (aquatic life – freshwater (acute) and marine water (acute))
- Nickel (aquatic life – freshwater (acute and chronic) and marine water (acute))
- Selenium (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Silver (aquatic life – freshwater (acute) and marine water (acute))
- Zinc (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Chlorodibromomethane (human health – organisms only)
- Fluorene (human health – organisms only)
- Hexachlorbutadiene (human health – organisms only)
- PCBs (human health – water & organisms and organisms only)

EPA is proposing to withdraw the federally promulgated criteria for these pollutants and does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the federally promulgated criteria.

The following is a list of pollutants for which New Jersey adopted criteria, and which EPA approved, that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11 covered in this proposal :

- Copper (aquatic life – marine (acute and chronic))
- Lead (aquatic life – freshwater (chronic) and marine water (chronic))
- Mercury (aquatic life – freshwater (chronic) and marine water (chronic))
- Nickel (aquatic life – marine water (chronic))
- 1,1-Dichloroethylene (human health – organisms only)
- 1,1,2,2-Tetrachloroethane (human health – organisms only)
- 1,1,2-Trichloroethane (human health – organisms only)
- Isophrone (human health – organisms only)
- gamma-BHC (human health – organisms only)

As these criteria are less stringent than the federally promulgated criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131, EPA is seeking public comment before withdrawing the federally promulgated criteria.

The finalization of the proposed actions for New Jersey would result in the complete removal of New Jersey from the NTR.

Puerto Rico

On September 21, 1990 and March 28, 2003, respectively, Puerto Rico submitted to EPA Region 2 revisions to its water quality standards, including aquatic life and human health criteria. Puerto Rico adopted aquatic life and human health criteria for many of the toxic pollutants

contained in the NTR. EPA Region 2 approved the Commonwealth's 1990 and 2003 criteria on March 28, 2002, and June 26, 2003, respectively, because Puerto Rico's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published the final rule to remove those criteria that were no less stringent than the promulgated criteria in the NTR in the Federal Register on October 29, 2004 (69 FR 63079). However, this action did not address all applicable EPA promulgated numeric water quality criteria contained in the 1992 NTR.

On May 5, 2010, Puerto Rico submitted to EPA Region 2 revisions to its water quality standards, including aquatic life and human health criteria. Puerto Rico adopted aquatic life and human health criteria for the remainder of the toxic pollutants contained in the NTR. EPA Region 2 approved the Commonwealth's criteria on August 4, 2010, because Puerto Rico's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA approved the Commonwealth's criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the Commonwealth's criteria were scientifically sound and protective of the designated use(s). EPA's actions which approve Puerto Rico's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number **EPA-HQ-OW-2012-0095**.

For many of the pollutants covered in the 2010 action, Puerto Rico adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated federal criteria. In addition, for certain pollutants covered in the 2010 action, Puerto Rico adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated

federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11.

The following is a list of pollutants for which Puerto Rico adopted criteria that are no less stringent than the promulgated federal criteria covered in this proposal:

- Chromium VI (aquatic life – marine water (acute and chronic))
- Thallium (human health – water & organisms and organisms only)
- Dioxin (human health – water & organisms and organisms only)
- Dichlorobromomethane (human health – organisms only)
- Benzo(a)Anthracene (human health – organisms only)
- Benzo(a)Pyrene (human health – organisms only)
- Benzo(b)Flouranthene (human health – organisms only)
- Benzo(k)Flouranthene (human health – organisms only)
- Chrysene (human health – organisms only)
- Dibenzo(a,h)Anthracene (human health – organisms only)
- Fluorene (human health – organisms only)
- Indeno(1,2,3-cd) Pyrene (human health – organisms only)
- alpha-BHC (human health – water & organisms and organisms only)
- beta-BHC (human health – water & organisms and organisms only)
- gamma-BHC (aquatic life – freshwater (chronic))

- alpha-Endosulfan (aquatic life – marine water (acute and chronic))
- beta-Endosulfan (aquatic life – marine water (acute and chronic))
- Endrin Aldehyde (human health – water & organisms and organisms only)
- Heptachlor Epoxide (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- PCBs (aquatic life – freshwater (chronic) and marine water (chronic))
(human health – water & organisms and organisms only)

EPA is proposing to withdraw the federally promulgated criteria for these pollutants and does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the federally promulgated criteria.

The following is a list of pollutants for which Puerto Rico adopted criteria, approved by EPA, that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131, covered in this proposal:

- Mercury (aquatic life – freshwater (chronic) and marine water (chronic))
- Dichlorobromomethane (human health – water & organisms)
- Benzo(a)Anthracene (human health – water & organisms)
- Benzo(a)Pyrene (human health – water & organisms)
- Benzo(b)Flouranthene (human health – water & organisms)
- Benzo(k)Flouranthene (human health – water & organisms)

- Chrysene (human health – water & organisms)
- Dibenzo(a,h)Anthracene (human health – water & organisms)
- Indeno(1,2,3-cd) Pyrene (human health – water & organisms)
- Isophrone (human health – water & organisms and organisms only)
- Endosulfan Sulfate (human health – water & organisms and organisms only)
- Endrin (aquatic life – freshwater (chronic))
- Heptachlor Epoxide (human health – water & organisms and organisms only)

As these criteria are less stringent than the promulgated federal criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.36, EPA is seeking public comment before withdrawing the federally promulgated criteria.

The finalization of the proposed actions for Puerto Rico would result in the complete removal of Puerto Rico from the NTR.

California

This notice proposes to amend the federal regulations to withdraw water quality criteria for cyanide applicable to San Francisco Bay, California. On December 22, 1992, in the NTR, and on May 18, 2000, in the CTR, EPA promulgated federal regulations establishing water quality criteria for priority toxic pollutants for California. On February 28, 2008, California completed its adoption process to incorporate cyanide aquatic life water quality criteria for San

San Francisco Bay. The State calls these criteria site-specific water quality objectives or site-specific objectives (“SSOs”). On May 28, 2008, the State submitted the site-specific objectives to EPA Region 9 for review and approval. On July 22, 2008, EPA approved an amendment to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan), which was adopted under Resolution No. R2-2006-0086 and submitted to EPA by the State. The amendment adopts site-specific marine aquatic life water quality objectives for cyanide in San Francisco Bay. Since California now has marine aquatic life site-specific objectives, effective under the CWA, for cyanide for San Francisco Bay, EPA has determined that the federally promulgated saltwater cyanide aquatic life criteria are no longer needed for San Francisco Bay. EPA approved the State’s criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the State’s criteria were scientifically sound and protective of the designated use(s) for San Francisco Bay. EPA’s actions which approve California’s adopted objectives (including a rationale for approving objectives that are less stringent than the federally promulgated criteria) can be accessed at OW docket number **EPA-HQ-OW-2012-0095**.

Described in detail herein under the heading “Site-Specific Aquatic Life Objectives for Cyanide” are California’s recently adopted marine cyanide aquatic life site-specific objectives for the San Francisco Bay, which EPA subsequently approved, including the accompanying footnotes to the table. The footnotes also include a description of which waters are included in the term “San Francisco Bay.”

EPA-Approved Site-Specific Aquatic Life Objectives

Table 3-3C: Marine ^a Water Quality Objectives for Cyanide in San Francisco Bay ^b
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(values in µg/l)		
Cyanide	Chronic Objective (4-day Average)	2.9
Cyanide	Acute Objective (1-hour Average)	9.4

Footnotes to Table 3-3C:

a. Marine waters are those in which the salinity is equal to or greater than 10 parts per thousand 95 percent of the time, as set forth in Chapter 4 of the Basin Plan. For water in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the freshwater and marine objectives.

b. These Objectives apply to all segments of San Francisco Bay, including Sacramento/San Joaquin River Delta (within San Francisco Bay region), Suisun Bay, Carquinez Strait, San Pablo Bay, Central San Francisco Bay, Lower San Francisco Bay, and South San Francisco Bay.

As these criteria are less stringent than the promulgated federal criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131, EPA is seeking public comment before withdrawing the federally promulgated criteria. This proposal will result in the withdrawal of saltwater aquatic life cyanide¹ criteria for San Francisco Bay under the NTR (with conforming changes to the CTR).

¹ In the regulatory text, saltwater criteria for Cyanide are identified as Columns C1 and C2 of "Compound 14" in National Toxics Rule at 40 CFR 131.36(b)(1), therefore, the proposed withdrawal will remove Column C1-pollutant 14 and Column C2 "pollutant 14" from the applicable criteria to "Waters of San Francisco Bay, at 40 CFR 131.36(d)(10)(ii).

However, other criteria for cyanide for waters in California that are currently part of the NTR or CTR will remain unchanged in the federal regulations.

III. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information-collection burden because it is administratively withdrawing federal requirements that are no longer needed in New Jersey, Puerto Rico, and California. It does not include any information-collection, reporting, or recordkeeping requirements. However, the Office of Management and Budget (“OMB”) has previously approved the information-collection requirements contained in the existing regulations 40 CFR Part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040-0049. The OMB control numbers for EPA’s regulations are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking

requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's ("SBA's") regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector. Thus, this rule is not subject to the requirements of UMRA Sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA Section 203.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 of August 4, 1999, entitled “Federalism” (64 FR 43255, August 10, 1999). This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no regulatory requirements or costs on any tribal government. It does not have substantial direct effects on tribal governments, the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997)

because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early-life exposure to the toxic pollutants for which we are soliciting comments.

H. Executive Order 13211 (Actions that Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) New Jersey's, Puerto Rico's, and California's criteria apply to all marine waters in the State, and thus EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA Section 304(a) recommended criteria, that New Jersey's, Puerto Rico's, and California's adopted and EPA-approved criteria are protective of human health and aquatic life.

List of Subjects in 40 CFR Part 131

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 30, 2012

Lisa P. Jackson,

Administrator.

- For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended as follows:

- a. Removing and reserving paragraph (d) (3).

- b. Removing and reserving paragraph (d) (4).

- c. Revising the table in paragraph (d)(10)(ii) as follows:

- (i) Under the heading “Water and use classification” add a new first line to read as follows:

Waters of the Sacramento-San Joaquin Delta within Regional Water Board 5

- (ii) Under the heading "Applicable criteria” add a new first line to read as follows:

These waters are assigned the criteria in:

Column C1 – pollutant 14

Column C2 – pollutant 14

(iii) Under the heading “Applicable criteria”, opposite the entry for “Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta”, remove “Column C1 – pollutant 14” and “Column C2 – pollutant 14”.

§ 131.38 [Amended]

3. Section 131.38 is amended as follows:

a. Revise footnote “r” in the “Footnotes to Table in Paragraph (b) (1)” to read as follows:

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

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